

UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 AT SEATTLE

08	MICHAEL B. FJERSTAD,	)	CASE NO. C08-0023-JCC-MAT
		)	
09	Plaintiff,	)	
		)	
10	v.	)	ORDER DENYING MOTION
		)	FOR DEFAULT JUDGMENT
11	SCOTT BACH, et al.,	)	
		)	
12	Defendants.	)	
	_____	)	

14 This matter comes before the Court on Plaintiff's motion for default judgment, which was  
 15 filed on May 6, 2008. Plaintiff seeks a default judgment against the defendants on grounds that  
 16 they failed to answer the complaint within the time limitations of Rule 12(a)(1)(A) of the Federal  
 17 Rules of Civil Procedure, or within 20 days. Defendants have filed a response objecting to the  
 18 motion (Dkt. # 26), and Plaintiff has filed a reply (Dkt. # 29). The Court, having reviewed  
 19 Plaintiff's motion and the balance of the record, hereby finds and ORDERS:

20 (1) A district court's decision whether to enter a default judgment is a discretionary  
 21 one. *Aldabe v. Aldabe* , 616 F.2d 1089, 1092 ((9th Cir. 1980). The courts disfavor default  
 22 judgment because cases should be decided on their merits whenever possible. *See Eitel v.*

01 *McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986) (citing *Pena v. Seguros La Comercial, S.A.*, 770  
02 F.2d 811, 814 (9th Cir. 1985)).

03 Here, Defendants timely filed an answer to Plaintiff's complaint on April 22, 2008. (Dkt.  
04 #21.) Although the record appears to support Plaintiff's assertion that he did not receive a copy  
05 of Defendants' answer until after he filed his motion for default judgment,<sup>1</sup> Plaintiff has neither  
06 alleged nor is there any evidence that he was prejudiced by Defendants' delay in serving the  
07 answer. Because all the defendants have appeared and timely filed an answer in this case, no  
08 default has occurred.

09 (2) Accordingly, Plaintiff's Motion for Default Judgment (Dkt. #25) is DENIED.

10 (3) The Clerk is directed to send a copy of this Order to Plaintiff, to counsel for  
11 Defendants, and to the Honorable John C. Coughenour.

12 DATED this 21st day of May, 2008.

13  
14   
15 Mary Alice Theiler  
16 United States Magistrate Judge  
17  
18  
19  
20

---

21 <sup>1</sup> The Certificate of Service that Defendants filed with their answer to the complaint shows  
22 only that the answer was filed electronically with the court. (Dkt. # 21 at 8.) However,  
Defendants included a copy of the answer as Exhibit B of their response to Plaintiff's motion for  
default judgement, which was mailed to Plaintiff on May 7, 2008. (*See* Dkt. # 26 at 3, 6-14.)